BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

BARBARA A. ELKINS	)	
Claimant	)	
VS.	)	
	)	Docket No. 253,708
COWLEY COUNTY COMMUNITY COLLEGE	)	
Respondent	)	
AND	)	
	)	
KANSAS ASSOCIATION OF SCHOOL BOARDS	)	
Insurance Carrier	)	

ORDER

Respondent appealed Administrative Law Judge John D. Clark's September 19, 2000, preliminary hearing Order.

ISSUES

The Administrative Law Judge granted claimant's request for medical treatment for a low-back injury.

On appeal, the respondent contends claimant's current low-back problem and need for medical treatment is not the result of the January 12, 2000, work-related accident. But is the result of a subsequent accident that occurred on May 18, 2000, while claimant was trimming bushes at home.

Conversely, claimant contends her current low-back problem is the natural consequence of her January 12, 2000, work-related accident. Claimant argues the pain and discomfort she experienced while trimming bushes at home on May 18, 2000, was not a significant or traumatic event that would be characterized as a new and separate accident causing a second injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board finds the preliminary hearing Order should be affirmed.

The issue raised by the respondent on appeal is whether claimant's current need for medical treatment is the natural consequence of claimant's work-related January 12, 2000, accident or whether claimant suffered a subsequent and separate intervening accident at home on May 18, 2000. The Appeals Board finds, as it has previously, that the question of whether claimant suffered an intervening accident resulting in a second injury is the jurisdictional issue of whether claimant's accident injury arose out of and in the course of her employment with the respondent.[1]

Claimant injured her low back while working for the respondent on January 12, 2000. Respondent provided medical treatment for claimant's low-back injury through Jerry L. Old, M.D.

Dr. Old first saw claimant on February 10, 2000. He found claimant with low-back complaints. The doctor diagnosed claimant with a low-back strain. Claimant was placed in a physical therapy program and medication was prescribed. On April 10, 2000, Dr. Old found claimant's low-back strain improved and she was released to return to work at full duty without restrictions. But claimant decided not return to work for the respondent. Claimant was afraid that if she continued to work for the respondent she would reinjure her back.

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On May 18, 2000, claimant trimmed some bushes in front of her home with a three-pound electric trimmer. Shortly after claimant began trimming the bushes, she noted soreness and a burning sensation in her low back. The symptoms were in the same area of her low back that she experienced after her January 12, 2000, work-related accident. Claimant only trimmed the bushes for about 20-25 minutes because of the low-back symptoms.

Claimant's low-back pain was worse after she trimmed the bushes than after her January 12, 2000, work-related accident. The pain also radiated down into her legs after the incident at home. After her work-related accident, she did not have radiating pain. On the date of the preliminary hearing, September 19, 2000, claimant testified that her low-back pain and discomfort had improved because she had been careful in her movements and in completing other required living acitivities.

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[1] *See* K.S.A. 1999 Supp. 44-534a and Myers v. Design Forum, Inc., WCAB Docket No. 198,736 (June 1998).

After the May 18, 2000, incident at home, claimant returned to see Dr. Old the next day, May 19, 2000. Dr. Old's medical records were admitted into the preliminary hearing record. His May 19, 2000, medical note indicated claimant presented a history of pruning a hedge at home and her back pain flared up once again. Claimant related to the doctor that her pain was almost as severe as before, if not more so. Claimant was also experiencing pain radiating down into her right leg and sometimes in the left leg.

Dr. Old performed a physical examination of the claimant and his impression was "Recurrent low back pain." The doctor suggested an MRI scan, told claimant to continue taking Ibuprofen for the pain, and to rest a considerable amount of time at home.

Respondent argues that claimant suffered a new and separate accident while she was trimming bushes at home on May 18, 2000. This new and separate intervening accident is the cause of claimant's current low-back problem and need for medical treatment. Respondent cites the Kansas Supreme Court decision in Stockman v. Goodyear Tire and Rubber Co., 211 Kan. 260, 505 P.2d 697 (1973) in support of its argument that claimant's current low-back problem and need for medical treatment is the result of a new and separate intervening accident. In Stockman, the Kansas Supreme Court rejected claimant's argument that his current back injury was the direct and natural result of his primary work injury. The Kansas Supreme Court held the natural consequence rule applies to a situation where a claimant's disability gradually increases from a primary accidental injury but not when the increase in disability results from a new and separate accident. 211 Kan. at 263.

The Appeals Board concludes the record as is complied to date falls short of proving claimant's act of trimming the bushes can be characterized as a new and separate intervening accident. The Appeals Board, therefore, concludes claimant's current condition is not the result of a new and separate intervening accident but is the natural consequence of her January 12, 2000, primary work-related accidental injury.[2] The Appeals Board finds this conclusion is supported by claimant's testimony and Dr. Old's medical records. Dr. Old indicated in his May 19, 2000, medical note that his impression was "Recurrent low back pain."

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge John D. Clark's September 19, 2000, preliminary hearing Order should be, and hereby is, affirmed.

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[2] *See* Gillig v. Cities Service Gas Co., 222 Kan. 369, 564 P.2d 548 (1977) and Hernandez v. State of Kansas, WCAB Docket No. 196,090 (April 1999).

IT IS SO ORDERED.

Dated this ____ day of October 2000.

BOARD MEMBER

c: Martin E. Updegraff, Wichita, KS
Anton C. Andersen, Kansas City, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director